

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE APPLICATION OF)	
SOUTHERN SHORES WATER COMPANY, L.L.C.)	
FOR APPROVAL OF ITS 2019 WATER SUPPLY)	
AGREEMENT WITH THE SEA COLONY)	PSC DOCKET NO. 19-0779
CONDOMINIUM ASSOCIATIONS AND FOR A)	
SUSPENSION OF RATES APPROVED IN PSC)	
ORDER 7973)	
(FILED NOVEMBER 21, 2019))	

ORDER NO. 9528

This 8th day of January 2020, the Delaware Public Service Commission (“Commission”) determines and Orders the following:

I. THE APPLICATION

1. On November 5, 2019, Southern Shores Water Company, LLC., (“Southern Shores”) and the Sea Colony condominium associations it serves entered into a new water supply agreement (“2019 Agreement”), with an effective date of January 1, 2020. The condominium associations are comprised of 30 residential condominium associations and a recreational association in the Sea Colony condominium complexes in and around Bethany Beach (collectively, “Associations”). The 2019 Agreement supersedes all prior water supply agreements between the parties, continues in force until December 31, 2029, and sets a fixed service fee of \$43.54 per month from January 1, 2020 through December 31, 2024. Starting January 1, 2025 and continuing for each January 1 for the duration of the Agreement, adjustments to the fixed service fee are keyed to annual changes in an inflation index. On November 21, 2019, Southern Shores filed for approval of the 2019 Agreement, as well as proposed changes to its tariff reflecting the terms set forth by the 2019 Agreement (“Application”).

2. On November 27, 2019, the Public Advocate filed his statutory notice of intervention in this proceeding.

II. BACKGROUND

3. The 2019 Agreement is the fourth in a series of water supply agreements between Southern Shores and the Associations. An initial water supply agreement was executed in 1999 (“1999 Agreement”), before Southern Shores became subject to Commission oversight. Because this agreement pre-dated the Commission’s regulatory supervision, the Commission decided to allow that water supply agreement and its rates to go into effect as Southern Shores’ initial lawful rate schedule. *See* PSC Order Nos. 5331 (Jan. 31, 2000) and 5394 (March 28, 2000). The 1999 Agreement called for periodic payments by the Associations based on a fixed per-unit, monthly charge, which charge was subject to annual increases based on an inflation index, with a 3% cap. *See* PSC Order No. 5394 at 2.

4. When the 1999 Agreement expired in 2002, Southern Shores then entered into a new five-year agreement to govern its water services to the Associations, and when this five-year agreement ended on December 31, 2006, Southern Shores then submitted to Commission Staff several extensions of the earlier supply agreements, which carried forward inflation-adjusted per-unit rates through April 2011. Because these extension agreements simply prolonged the use of the inflation adjustment mechanism set forth in the initial 1999 supply contract, Staff did not consider the changes to be “material” and therefore reviewed the extensions without formal Commission approval.

5. On April 1, 2011, Southern Shores filed with the Commission its third master Water Supply Agreement with the Association (the “2011 Agreement”). The 2011 Agreement set up a new per-unit fixed fee for 2011 and a pre-set upward increase to this fixed fee in 2012, 2013, 2014

and 2015. Starting January 1, 2016 and through the expiration date of June 30, 2020, the 2011 Agreement provided for annual increases keyed to annual changes in the inflation index, subject to a 3 percent cap.

6. The Commission directed Southern Shores to docket submission of the 2011 Agreement as a rate change application, which the Commission subsequently approved in PSC Order No. 7973 (May 24, 2011) in PSC Docket No. 11-246. In that Order, the Commission allowed the contract rates to go into effect on a temporary basis and subject to refund, pending notice to the customers and pending the review of any complaints received based on such notice. The Commission based its decision on the long history of water service being provided to the Association under negotiated water service agreements. *See* PSC Order No. 7973 at 10. The Commission also directed Southern Shores to file a single tariff setting forth all its terms and conditions for services to allow the Commission to track the company's rates and to render future modifications easier to process.

7. The Commission received no complaints regarding the 2011 Agreement and therefore did not re-open its review of the terms of the 2011 Agreement.

II. DISCUSSION

8. As noted by Southern Shores in its Application, and confirmed by Staff at the January 8, 2020 Commission meeting, the 2019 Agreement does not materially change current rates charged under the 2011 Agreement. In fact, the new 2020 per-unit rate of \$43.54 forgoes the otherwise applicable inflation adjustment and then remains unchanged through 2024. For 2025 through 2029, the per-unit rates will again be subject to an inflation adjustment tied to the U.S. Department of Labor's Consumer Price Index. Volumetric rates for metered irrigation service

accounts will remain at the existing rate of \$7.97 per thousand gallons through 2024, and then will be subject to the inflation adjustment for years 2025 through 2029.

9. Consistent with its review of prior agreements and based on the new rates remaining essentially unchanged from existing rates, the Commission now permits the 2019 Agreement to go into effect on a temporary basis and subject to refund, pending notice to the customers and pending the review of any complaints received in response to such notice. As noted by the parties, the January 1, 2020 effective date of the 2019 Agreement pre-dates the June 30, 2020 termination date of the 2011 Agreement and today's action by the Commission post-dates by seven days the effective date of the 2019 Agreement. By this Order, however, the Commission does not disturb any of the terms of the 2019 Agreement, including the January 1, 2020 effective date. The Commission also approves the proposed changes to Southern Shore's tariff, which reflect the terms of the 2019 Agreement.

**NOW, THEREFORE, BY THE AFFIRMATIVE VOTE OF NO FEWER THAN
THREE COMMISSIONERS, IT IS HEREBY ORDERED:**

10. That, pursuant to 26 *Del. C.* §§ 102A and 304(a), Southern Shores shall cause the attached notice, labeled as "Exhibit A," to be published in *The Wave* newspaper during the week of January 20, 2020.

11. That, pursuant to 26 *Del. C.* §§ 102A and 304(a), Southern Shores shall also, on or before January 20, 2020 send by United States certified mail, and by concurrent electronic mail where available, a copy of the notice attached here to as "Exhibit A," to the principal of each Sea Colony condominium association and recreation association that is a signatory to the Water Supply Agreement dated November 5, 2019. On or before January 31, 2020, Southern Shores shall file with the Commission: (a) one or more affidavits, with accompanying supporting documents, to demonstrate such publication, mailing, and electronic service; and (b) clean tariff sheets

incorporating the changes approved herein.

12. That, pursuant to 26 *Del. C.* §306(a)(2), the rates and charges set forth in the Water Supply Agreement dated November 5, 2019 and submitted to the Commission on November 21, 2019, and the associated tariff changes, shall be permitted to go into effect, on a temporary basis as of January 1, 2020. Such temporary rates shall be subject to refund if the Commission later finds such rates to be unjust and unreasonable in whole or in part.

13. That Southern Shores is hereby notified that it shall be charged the cost of this proceeding under 26 *Del. C.* §114(b).

14. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

Chairman

Commissioner

Commissioner

Commissioner

Commissioner

ATTEST:

Secretary

EXHIBIT “A”

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**PUBLIC NOTICE OF FILING OF NEW 2019 WATER SUPPLY AGREEMENT
BETWEEN SOUTHERN SHORES WATER COMPANY, LLC. AND SEA COLONY
DEVELOPMENT CONDOMINIUM ASSOCIATION, SEA COLONY RECREATIONAL
ASSOCIATION, AND ALL OTHER CUSTOMERS OF WATER SERVICE FROM
SOUTHERN SHORES WATER COMPANY, LLC.**

**TO: Sea Colony Condominium Associations;
Sea Colony Recreational Association; and
All Other Southern Shores Water Company, L.L.C. Customers**

Southern Shores Water Company, L.L.C. (“Southern Shores”) is a water utility that provides water services to the condominium units and common areas, as well as various commercial entities, within the Sea Colony complexes in and around Bethany Beach, Delaware (the “Associations”). Southern Shores is a public utility subject to the regulatory oversight of the Delaware Public Service Commission (the “Commission”). Such oversight includes the Commission’s ability to determine the justness and reasonableness of the rates that Southern Shores charges for its water utility services. The Commission also has the authority to supervise the terms and conditions and adequacy of the water utility services provided by Southern Shores.

On November 21, 2019, Southern Shores submitted to the Commission a new Water

Supply Agreement (the “Agreement”) executed by the utility and the managing agent for all the Associations. By its terms, the Agreement sets the rates that Southern Shores will charge these Associations for its water utility services from January 1, 2020 through December 31, 2029. The Agreement provides for a monthly charge (based on a fixed service fee times the number of units) to be charged to each condominium association and a separate metered charge for water supplied for irrigation units. The monthly fixed service fee is set at \$43.54 per unit in 2020 through 2024. Thereafter, the fixed service fee will increase each year based on a formula keyed to an inflation index. The metered irrigation supply charge is set at \$7.97 for 1000 gallons for the years 2020 through 2024. Thereafter, the metered irrigation supply charge will increase each year based on a formula keyed to an inflation index.

On January 8, 2020, by Order No. 9528, the Commission permitted the Agreement to take effect on a temporary basis, subject to refund, pending review of any complaints received in response to this public notice. Thus, unless the Commission receives a complaint about the rates proposed to be charged under the new Water Supply Agreement, the Commission may allow those rates to go into effect as Southern Shores’ approved rates, without further investigation or hearings. Such action would not preclude the Commission from conducting any appropriate investigation into the justness and reasonableness of such charges, and if such might then be found to be unjust or unreasonable, to then set reasonable rates to govern thereafter.

If you wish to file a complaint about the new rates set forth in the Agreement, and to request further Commission investigation and hearings on such rates, you must do so on or before **March 2, 2020**.

You are invited to review Southern Shore’s application and supporting documents to determine how your interest may be affected by going to DelaFile (<http://delafile.delaware.gov>),

the Commission's docketing and file management system, and by searching for Docket No. 19-0779.

If you would like to review documents at the Commission's offices, please contact Donna Nickerson at (302) 736-7500 or by sending an email addressed to donna.nickerson@delaware.gov. You may also review copies of Southern Shore's application and supporting documents at the office of the Division of the Public Advocate located at either 820 North French Street, 4th Floor, Wilmington, Delaware 19801 or 29 South State Street, Dover, Delaware 19901. Please call either (302) 577-5077 or (302) 241-2545 to arrange for a time to review the documents at either of those locations.

If you wish to request copies of documents in this matter, please submit a Freedom of Information Act Request Form. The link to this form can be found on the Commission's website, <http://depsec.delaware.gov>, or by visiting this web address: <https://delafile.delaware.gov/Complaints/FOIA.aspx>. The Commission will respond to your request in accordance with the Delaware Freedom of Information Act, 29 *Del. C.* § 100.

If you have a disability and wish to review the materials in this matter, please contact the Commission to discuss any auxiliary aids or services you might need to help you. You may contact the Commission in person, by writing, by telephone (including text telephone), by Internet e-mail, or other means.

If you have questions about this matter, you may call the Commission at 1-800-282-8574 (toll-free in Delaware) or (302) 736-7500 (voice and text telephone). You may also send questions regarding this matter by Internet e-mail addressed to psc@delaware.gov.